the normal canons of construction. I cannot think that the word "rents" in the first limb with the words "excluding any municipal services paid by the tenant" appearing in brackets immediately after it can properly or reasonably be supposed to have assigned to it by the legislature any different meaning from the same word in the second limb of the same paragraph.

The only other matter that needs consideration is Mr. Rajah's submission that the respondent is now precluded from contending that upon the true construction of this paragraph municipal services must be excluded because his case on his pleadings is that the appellants have, excluding any municipal services paid, exceeded the limit imposed. It is clear from the record of appeal and indeed from the judgment of the learned trial Judge that the respondent relied *inter alia* on the point of law as to the true construction of this paragraph. In any event the pleadings plainly disclose that the respondent is seeking to recover possession of premises subject to the Ordinance and it cannot be doubted that where the facts show that the case falls within section 15(1)(g) of the Ordinance, which has been pleaded by the respondent, the Court has power to make an order or judgment for the recovery of possession of such premises. This contention of Mr. Rajah's also fails. I would accordingly dismiss the appeal with costs.

*Appeal dismissed.*

Solicitors: *Tan, Rajah & Cheah*; *Drew & Napier.*

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## *Re* CHAN EOW BENG

**[R. Cr. J. (Rigby J.) March 21, 1961]**

**[Penang — Criminal Revision No. 1 of 1961]**

*Road Traffic — Endorsement on licence — Limited disqualification — Unintended effect on defendant's livelihood — 'Private car' not within classification — Road Traffic Ordinance, 1958, ss.4, 30(1) and (2) — Motor Vehicles (Driving Licence) Rules, 1959.*

The defendant was charged with using a motor-car as a public service vehicle when the vehicle was not licensed for such a purpose. The learned Magistrate made an order under section 30(1) of the Road Traffic Ordinance, disqualifying the defendant from holding or obtaining a licence to drive a private motor-car for a period of 12 months.

**Held:** (1) effect of such order, though unintended, must necessarily and consequently deprive the defendant of his licence to drive a car of that class or description as the holder of a vocational licence, under section 133(1) and (2) of the Road Traffic Ordinance;

(2) the Order of the Magistrate is bad for uncertainty, since the term 'private car' is not to be found in the classification of motor vehicles under section 4 of the Road Traffic Ordinance or in the classification and description of such vehicles under the Motor Vehicles (Driving Licence) Rules.

**Obiter:** ".....Limited disqualifications should refer to 'vehicles which can be found under a particular class in the Act or under a particular description'."

*Cases referred to:*—

(1) *Re Kanapathipillai & Ors.* [1960] M.L.J. 243.
(2) *Burrows* v. *Hall* [1950] 2 All E.R. 156.
(3) *Petherick* v. *Buckland* [1955] 1 All E.R. 151.

CRIMINAL REVISION.

*L. A. Massie* (Deputy Public Prosecutor) for the Public Prosecutor.

*Tan Lye Huat* for accused as *amicus curiae.*

**Rigby J.:** This case was referred to me by the learned Magistrate with a view to a revision of the order made by him. Since the case is by no means free from difficulty I think it would be convenient if, before dealing with the nature of his application or request for revision, I set out the facts of the matter.

The defendant was charged with using a motor-car as a public service vehicle, when the vehicle was not licensed for such a purpose. As a necessary consequence of that charge he was also confronted with the more serious charge of using the car when there was not in force, in relation to its user, a policy of insurance in respect of third party risks.

The facts themselves were perfectly simple and straightforward. A lady in Prangin Road required a taxi to take her to Minden Barracks. She saw a row of motor-cars, parked unattended, which she assumed to be taxis. There was a group of men standing on the opposite side of the road. One of the men — who was, in fact, the defendant — approached her and inquired if she wanted a taxi. She replied in the affirmative. He moved up his vehicle and drove her to Minden Barracks. On arrival there, the car was stopped for checking by the Military guard at the gate. Apparently an Army Sergeant asked the defendant where his taxi plate was, to which he replied that he had not got one. The defendant was permitted to enter the gates and drive the lady to her destination. She was then charged the extremely reasonable and, I should have thought, wholly uneconomic fare of $2. That occurred on the 28th September, 1960. On the 16th December, 1960, the defendant appeared in Court to answer to these two charges. The defendant is, in fact, the holder of a vocational licence, issued under section 133(1) of the Road Traffic Ordinance, authorising him to drive a public service vehicle, a taxi cab. His defence was that on this particular day his own taxi was being repaired. The lady stopped him and asked him to drive her to Minden Barracks and he agreed to do so. Evidence was given that, in fact, his taxi was being repaired that day. I am informed that although the defendant was at the material time the registered owner of the private car he was not, in fact, the owner of the taxi and was simply a hired driver. On the facts, the learned Magistrate very properly convicted him of both offences as charged and fined him $70 on the 1st Charge and $50 on the 2nd Charge. Again, in respect of the 2nd Charge the Magistrate very properly gave him an opportunity, through his Counsel, to put forward

any special reasons as to why he should not be disqualified for the minimum period of 12 months in accordance with the mandatory provisions of section 74(2) of the Ordinance. He was apparently satisfied that there were no such reasons existing and he accordingly disqualified him from holding or obtaining a licence to drive a private car for a period of 12 months. In limiting the disqualification to the driving of a private motor-car the learned Magistrate was clearly acting under what he deemed to be the discretion vested in him by the proviso to section 30(1) in limiting such disqualification "to the driving of a motor vehicle of the same class or description as the motor vehicle in respect of which the offence was committed". In limiting the disqualification to the driving of private motor-cars the Magistrate clearly intended that such disqualification should not interfere with the defendant's livelihood by depriving him of his licence to drive a taxi cab.

The practical difficulty which arises, however, is as to the consequential effect of the order made by the Magistrate. That difficulty arises for this reason: under section 133(1) of the Road Traffic Ordinance no person shall drive a public service vehicle — which, under section 93(1), includes taxi cabs and hired cars — unless he is the holder of a "vocational licence" granted by the Registrar of Motor Vehicles. Under section 133(2) the Registrar shall not issue a vocational licence to drive a public service vehicle unless the applicant is over the age of 18 and fulfils such other conditions as may be prescribed. One of the conditions so prescribed under Rule 4 of the Public Service Vehicles (Drivers, Conductors and Passengers) Rules, 1959, is that the applicant must satisfy the Registrar that he is the holder of a driving licence which he shall produce for examination, if required. It is, therefore, perfectly clear that a necessary condition precedent to a person applying for a vocational licence to drive a public service vehicle is that he must already be the holder of an ordinary driving licence issued under the provisions of Part II of the Ordinance. The effect, therefore, of the order made by the Magistrate disqualifying him from holding or obtaining a licence to drive a private motor-car for 12 months automatically disqualified him from driving a public service vehicle since the validity of the latter licence was dependent upon the continued existence in force of the former.

The learned Magistrate referred the matter to me for the purpose of consideration as to whether an order could properly be made limiting the defendant's disqualification to that of driving a private motor-car without affecting his ability to hold a vocational licence to drive a public service vehicle, to wit, a taxi cab or hired car. I adjourned the matter into open Court to give the Legal Adviser an opportunity to be heard and also because before making any order, the effect of which would have serious consequences upon the defendant, I should give him every opportunity to be heard. Mr. Tan Lye Huat, who appeared for him in the lower Court, kindly consented to argue the matter before me on his behalf as *amicus curiae*. As a result of the argument I am quite satisfied that for the reasons I have already stated above, unfortunate though it may well be, the effect of disqualifying the defendant from holding a licence to drive a motor-car must necessarily and consequentially deprive him of his licence to drive a car of that class or description as the holder of a vocational licence. The position would, indeed, have been different if he had been a bus driver by occupation and was using his private car on this occasion as a hired car. In such a case the Magistrate, in his discretion and in exercise of the proviso to section 30, could properly have limited the disqualification to the driving of a motor-car without affecting his ability to drive a bus, such vehicle being of an entirely different class or description.

The penalty imposed upon the defendant, the direct effect of which is to preclude him from carrying on his livelihood as a taxi driver for the next 9 months, is an extremely serious one. I have given careful and sympathetic consideration to the question whether there were circumstances present which would have justified the trial Court, or this Court, in holding that there were special reasons present to permit it to exercise its discretion in not imposing the otherwise mandatory order of disqualification. But it is abundantly clear from a long line of authorities that to justify the exercise of such a discretion such reasons must be "special" to the particular offence committed and not to the offender. (See the recent decision of Adams J. in *Re Kanapathipillai & Ors.*[1], in which many of the decisions are referred to and summarised). It has repeatedly been held that the fact that an order for disqualification will result in the offender being prevented from carrying on his livelihood as a driver of a public service vehicle is a reason "special to the offender and not to the offence". In this case it is perfectly clear that the offender offered himself and his car as a taxi cab for hire and that offer was accepted. It was a clearly proved offence and there was nothing to justify or excuse its commission. There were, therefore, no circumstances present relative to the commission of the offence itself which would have justified the Magistrate in exercising his discretion in favour of the defendant and not ordering disqualification.

In arriving at the decision in this case I have given careful consideration to the words contained in the proviso to section 30(1) of the Ordinance giving the Court a discretion to limit the disqualification to the driving of a motor vehicle "of the same class or description as the motor vehicle in respect of which the offence was committed". As I have already said, such a discretion may reasonably and fairly be

exercised where, for example, a lorry driver is convicted of an offence such as driving his own private car without being covered by a third party insurance policy. (See *Burrows* v. *Hall*[2]). It may well be considered that a disqualification limited to the type of vehicle in respect of which the offence was committed, namely, a motor-car, is sufficient without imposing a complete disqualification, the effect of which would be to deprive him of his livelihood as a lorry driver. But such a disqualification, it is to be noted, may be limited to the same class or description as the vehicle in respect of which the offence was committed.

The use of the words "class" or "description" in the corresponding section of the English Road Traffic Act, 1930, gave rise to difficulties of construction and interpretation which were exemplified and illustrated in the case of *Petherick* v. *Buckland*[3]. In that case the Justices had limited a driving disqualification to the driving of "five hundredweight vehicles". The question that the Divisional Court was asked to decide on a case stated was whether this was a "class or description" of vehicles within the meaning of section 6(1) of the Act (corresponding to section 4(1) of our Ordinance). The Divisional Court found itself unable to say what a "description" of a vehicle means in the section, or who is to prescribe descriptions of vehicles. While the Court was not prepared to say that the Justices could not themselves lawfully make "five hundredweight vehicles" a "description" of vehicles it pointed out the inconvenience of an order of this nature being made by the Justices, and it directed that in future limited disqualifications should refer to "vehicles which can be found under a particular class in the Act or under a particular description in the regulations." That is a direction which might, I venture to suggest, be conveniently and properly followed by Magistrates in this country. Section 4(1) of the Ordinance prescribes the "classes" into which motor vehicles shall be divided and column 1 of the Table contained in paragraph 4 of Rule 6 of the Motor Vehicles (Driving Licence) Rules, 1959, by reference to Rule 6(3), comprises the class or description of motor vehicles in respect of which persons may be granted a licence to drive. In the event of a Magistrate exercising his discretion to limit the disqualification imposed by him to, for example, a licence to drive motor vehicles of the class or description comprised in "Group D — Motor Car" shown in column 1 of the Table contained in the Motor Vehicles (Driving Licence) Rules, it is desirable that he should say so in express terms in the order made by him before transmitting a copy of that order to the Registrar of Motor Vehicles.

In the present case the Magistrate disqualified the defendant from holding or obtaining a licence to drive a private motor-car for 12 months. I think that order as it stands is bad for uncertainty since the term "private car" is not to be found in the classification of motor vehicles under section 4 of the Ordinance or in the classification and description of such vehicles under the Motor Vehicles (Driving Licence) Rules. Under the discretionary power vested in this Court I therefore direct that the terms of the order be varied to an order disqualifying the defendant from holding or obtaining a licence to drive a motor vehicle of the class or description comprised in "Group D — Motor Car" as shown in column 1 of the Table contained in the Motor Vehicles (Driving Licence) Rules, 1959, for a period of 12 months as from the date of his conviction on the 27th day of December, 1960. I direct that a copy of this Order be sent to the Registrar of Motor Vehicles, Penang.

*Order Varied.*

Solicitor: *Lee Thean Chu.*

## CHEAH SWEE HOCK v. PUBLIC PROSECUTOR

**[A. Cr. J. (Rigby J.) March 21, 1961]**

**[Penang — Criminal Appeal No. 5 of 1961]**

*Possession — Right to — Rival claimants to car which is subject matter of cheating case — Bona fide purchaser for value without notice — 'Mercantile agent' — Factors Act, 1889, ss.1(1), 2(1) — Sale of Goods Act, 1893, ss.23, 24.*

*Criminal Procedure — Jurisdiction of Magistrate holding an inquiry under s.441 of the Criminal Procedure Code — Criminal Procedure Code, (S.S. Cap. 21), ss.435, 436 and 441.*

*Hire-purchase transaction — Whether a moneylending transaction.*

This was an appeal from a decision of the learned Magistrate arising out of an inquiry held by him under section 441 of the Criminal Procedure Code, as to the right of possession of two rival claimants, the appellant and a finance company, in respect of a motor-car which one Loo Lean How had fraudulently transferred to the company and who had been convicted of cheating.

**Held:** (1) the company was a purchaser in good faith and without notice of any defect in the seller's title to the car;

(2) at the time Loo Lean How sold the car, he was acting as a 'mercantile agent' within the meaning of section 1 of the Factors Act, 1889, that he was in possession of the car and all the documents of title to the car with the consent of the owner, that the company acted in good faith in acquiring the car, and that the sale or disposition to the company was, therefore, as valid as if Loo Lean How had been acting with the express authority of the owner;

(3) the words 'in the manner hereinafter mentioned' contained in section 436 of the Criminal Procedure Code, must necessarily refer to section 441 and the procedure therein specified;

(4) there was a sale of the car by Loo Lean How to the company and that Loo Lean How entered into a Hire-Purchase Agreement in respect of the car. The transaction was therefore not a moneylending transaction.

*Cases referred to:—*

(1) *Oppenheimer* v. *Fraser & Wyatt & Anor.* [1907] 2 K.B. 50.

(2) *Folkes* v. *King* [1923] 1 K.B. 282.

(3) *Joblin* v. *Watkins & Roseveare (Motors) Ltd.* [1949] 1 All E.R. 47.

(4) *Gladys Nugawela* v. *Soon Teck Finance Co.* [1960] M.L.J. 302.